

HOUSE BILL No. 1401

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-5-1-14; IC 23-21.

Synopsis: Real estate investment trusts. Permits the creation and operation of a real estate investment trust in Indiana.

Effective: July 1, 2016; July 1, 2017.

Speedy

January 13, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1401

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-5-1-14 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]: **Sec. 14. The secretary of state shall adopt rules to:**

4 **(1) implement IC 23-21; and**

5 **(2) adopt a schedule of fees for the filing of documents relating**
6 **to a real estate investment trust that is substantially similar to**
7 **the schedule of fees required for the filing of documents**
8 **relating to a corporation under IC 23-1-18-3.**

9 SECTION 2. IC 23-21 IS ADDED TO THE INDIANA CODE AS
10 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
11 2017]:

12 **ARTICLE 21. REAL ESTATE INVESTMENT TRUSTS**

13 **Chapter 1. Definitions and General Provisions**

14 **Sec. 1. This article shall be known and may be cited as the**
15 **Indiana REIT law.**

16 **Sec. 2. This article applies only to the creation, operation, and**
17 **existence of a real estate investment trust. This article does not**



1 affect a trust that is not a real estate investment trust.

2 **Sec. 3.** If any provision of this article conflicts with Sections 856
3 through 858 of the Internal Revenue Code, or with regulations
4 adopted under those sections, those sections or regulations prevail
5 with respect to any real estate investment trust that qualifies under
6 those sections or regulations.

7 **Sec. 4. (a)** The following definitions apply throughout this
8 article:

9 (1) "Declaration of trust" means the declaration of trust filed
10 with the secretary of state for the purpose of forming a real
11 estate investment trust, as specified in IC 23-21-2-2, either as
12 originally filed or as amended, corrected, or supplemented by
13 articles of amendment, articles of amendment and
14 restatement, articles supplementary, articles of merger, or a
15 certificate of correction.

16 (2) "Real estate investment trust" means an unincorporated
17 business trust or association formed under this article in
18 which property is acquired, held, managed, administered,
19 controlled, invested, or disposed of for the benefit and profit
20 of any person who may become a shareholder.

21 (3) "Share" means a transferable unit of beneficial interest in
22 a real estate investment trust.

23 (4) "Facts ascertainable outside the bylaws" includes the
24 following:

25 (A) For purposes of IC 23-21-2-2:

26 (i) an action or determination by any person, including
27 the real estate investment trust, its board of trustees, an
28 officer or agent of the real estate investment trust, and
29 any other person affiliated with the real estate
30 investment trust;

31 (ii) any agreement or other document; and

32 (iii) any other event.

33 (B) For purposes of IC 23-21-2-3:

34 (i) an action or determination by any person, including
35 the real estate investment trust, the board of trustees of
36 the real estate investment trust, an officer or agent of the
37 real estate investment trust, or any other person
38 affiliated with the real estate investment trust;

39 (ii) the contents of any agreement to which the real estate
40 investment trust is a party or any other document; and

41 (iii) any other event.

42 (C) For purposes of IC 23-21-7-3, an action or a



determination by any person, including:

- (i) the real estate investment trust or other entity, as applicable;
- (ii) the trustees, directors, partners, members, officers, or other agents of the real estate investment trust or other entity; and
- (iii) any other person affiliated with the real estate investment trust or other entity.

(D) For purposes of IC 23-21-7-3, any other event not specified in clause (C).

(b) "Reverse share split", for purposes of IC 23-21-5-1, means a combination of outstanding shares of beneficial interest of a real estate investment trust into a lesser number of shares of beneficial interest of the same class without any change to the aggregate par value of the outstanding shares.

Sec. 5. (a) A real estate investment trust may conduct business in Indiana in accordance with this article.

(b) A real estate investment trust is a:

- (1) permitted form of unincorporated business trust or association; and
- (2) separate legal entity.

Chapter 2. Formation and Qualification

Sec. 1. A real estate investment trust:

- (1) is formed by filing a declaration of trust with the secretary of state; and
- (2) may not do business in Indiana until it complies with this article.

Sec. 2. (a) A real estate investment trust shall file its declaration of trust with the secretary of state.

(b) The declaration of trust must do the following:

- (1) Indicate clearly that the trust is a real estate investment trust.
- (2) State the name of the trust.
- (3) State the total number of shares that the real estate investment trust has authority to issue.
- (4) Provide for an annual meeting of shareholders at a convenient location and on proper notice.
- (5) Provide for the election of trustees at least every third year at an annual meeting of shareholders.
- (6) State the number of trustees and the names of those persons who will serve as trustees until the first meeting of shareholders and until their successors are elected and



qualified or a later time as specified in the declaration of trust.

(7) State the name and address of a resident agent of the real estate investment trust in Indiana.

(8) If the shares are divided into classes as permitted by section 3 of this chapter, provide a description of each class, including any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, and terms and conditions of redemption.

(c) A declaration of trust may include a provision that allows the trustees, in considering a potential acquisition of control of the real estate investment trust, to consider the effect of the potential acquisition of control on:

- (1) shareholders, employees, suppliers, customers, and creditors of the trust; and
- (2) communities in which offices or other establishments of the trust are located.

(d) The inclusion or omission of a provision in a declaration of trust that allows the board of trustees to consider the effect of a potential acquisition of control on persons described in subsection (c) does not create an inference concerning factors that may be considered by the board of trustees regarding a potential acquisition of control.

(e) Notwithstanding any provision of this article that requires for any action the concurrence of a greater proportion of the votes than a majority of the votes entitled to be cast, a real estate investment trust may provide by its declaration of trust that the action may be taken or authorized on the concurrence of a greater or smaller proportion, but not less than a majority of the number of votes entitled to be cast on the matter.

(f) The declaration of trust shall be signed and acknowledged by each trustee.

(g) Any provision of the bylaws may be made dependent upon facts ascertainable outside the bylaws.

Sec. 3. (a) A real estate investment trust may include one (1) or more of the following provisions in its declaration of trust:

- (1) That any specified class of shares is preferred over another class as to its distributive share of the assets on voluntary or involuntary liquidation of the real estate investment trust and the amount of the preference.
- (2) That any specified class of shares may be redeemed at the



option of the real estate investment trust or of the holders of the shares and the terms and conditions of redemption, including the time and price of redemption.

(3) That any specified class of shares is convertible into shares of one (1) or more other classes and the terms and conditions of conversion.

(4) That the holders of any specified securities issued by or to be issued by the real estate investment trust have any voting or other rights which, by law, are or may be conferred on shareholders.

(5) That the holders of one (1) or more classes or series of shares have exclusive voting rights on an amendment to the declaration of trust that would alter only the contract rights, as expressly set forth in the declaration of trust, of the specified class or series of shares.

(6) For any other preferences, rights, restrictions, including restrictions on transferability or ownership designed to permit the real estate investment trust to qualify under the Internal Revenue Code or regulations adopted under the Code, or for any other purpose, and qualifications not inconsistent with law.

(7) That the board of trustees may classify or reclassify any unissued shares from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, or terms or conditions of redemption of the shares.

(8) That the board of trustees may amend the declaration of trust to increase or decrease the aggregate number of shares or the number of shares of any class that the trust has authority to issue.

(b) If, under a power contained in the declaration of trust, the board of trustees classifies or reclassifies any unissued shares by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, or terms or conditions of redemption, the board, before issuing any of the shares, shall file articles supplementary with the secretary of state, which must include:

(1) a description of the shares, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, and terms and conditions of redemption, as set or changed by the



board of trustees; and

(2) a statement that the shares have been classified or reclassified by the board of trustees under the authority contained in the declaration of trust.

(c) Any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, or terms or conditions of redemption of any class or series of shares may be made dependent upon facts ascertainable outside the declaration of trust and may vary among holders of the shares, if the manner in which the facts or variations will operate upon the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, or terms or conditions of redemption of such class or series of shares is clearly and expressly set forth in the declaration of trust.

(d) Except as provided in subsection (e), if the real estate investment trust has authority to issue shares of more than one (1) class, the certificate evidencing the shares must contain on its face or back a full statement or summary of:

(1) the designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, and terms and conditions of redemption of the shares of each class that the real estate investment trust is authorized to issue; and

(2) if the real estate investment trust is authorized to issue any preferred or special class in series, the:

(A) differences in the relative rights and preferences between the shares of each series to the extent they have been set; and

(B) authority of the board of trustees to set the relative rights and preferences of subsequent series.

(e) The full statement or summary as required in subsection (d) is not required if:

(1) a summary of the information required by subsection (d) is included in a registration statement permitted to become effective under the Federal Securities Act of 1933; or

(2) the certificate states that the real estate investment trust will furnish a full statement of the information required by subsection (d) to any holder of shares on request and without charge.

(f) Unless the declaration of trust provides otherwise, the trustees of a real estate investment trust may authorize the issue of



1 some or all of the shares of any or all of its classes or series without
 2 certificates. The authorization does not affect shares already
 3 represented by certificates until they are surrendered to the real
 4 estate investment trust. For shares issued without certificates, on
 5 request of the shareholder, the real estate investment trust shall
 6 send without charge to the shareholder a written statement of the
 7 information required on certificates by subsection (d) or (e).

8 (g) Articles supplementary shall be executed in the same manner
 9 required for an amendment to the articles of incorporation under
 10 IC 23-1.

11 (h) Except as provided in IC 26-1-8.1-204, the fact that a
 12 certificate does not contain or refer to a restriction on
 13 transferability or ownership that is adopted after the date of
 14 issuance of the certificate does not mean that the restriction is
 15 invalid or unenforceable.

16 Sec. 4. (a) The shareholders of a real estate investment trust
 17 may remove any trustee, with or without cause, by the affirmative
 18 vote of a majority of all the votes entitled to be cast generally for
 19 the election of trustees, except:

20 (1) as provided in subsection (b); or

21 (2) as otherwise provided in the declaration of trust of the real
 22 estate investment trust.

23 (b) Unless the declaration of trust of the real estate investment
 24 trust provides otherwise, if:

25 (1) the shareholders of any class or series are entitled
 26 separately to elect one (1) or more trustees, a trustee elected
 27 by a class or series may not be removed without cause except
 28 by the affirmative vote of a majority of all the votes of that
 29 class or series;

30 (2) a real estate investment trust has cumulative voting for the
 31 election of trustees and less than the entire board is to be
 32 removed, a trustee may not be removed without cause if the
 33 votes cast against the trustee's removal would be sufficient to
 34 elect the trustee if then cumulatively voted at an election of
 35 the entire board of trustees, or, if there is more than one (1)
 36 class of trustees, at an election of the class of trustees of which
 37 the trustee is a member; and

38 (3) the trustees have been divided into classes, a trustee may
 39 not be removed without cause.

40 Sec. 5. (a) Except as provided in subsection (b), the board of
 41 trustees of a real estate investment trust may establish one (1) or
 42 more committees of the board of trustees:



- (1) composed of one (1) or more trustees; and
- (2) for the delegation to those committees of any of the powers of the board of trustees.

(b) The declaration of trust or bylaws of a real estate investment trust, or any agreement to which the real estate investment trust is a party and which has been approved by the board of trustees, may provide for:

- (1) the establishment of one (1) or more standing committees or for the creation of one (1) or more committees upon the occurrence of certain events; and
- (2) the composition of the membership, and the qualifications and the voting and other rights of members of the committee, subject to the continued service of members of the committee as trustees.

Sec. 6. Notwithstanding any other provision of this article, a real estate investment trust may issue shares of beneficial interest without consideration for the purpose of qualifying the real estate investment trust as a real estate investment trust under the Internal Revenue Code.

Chapter 3. Powers

Sec. 1. A real estate investment trust has the following powers:

- (1) Unless the declaration of trust provides otherwise, to have perpetual existence unaffected by any rule against perpetuities.
- (2) To sue, be sued, file an action, and defend in any court.
- (3) To transact its business, carry on its operations, and exercise the powers granted by this title in any state, territory, district, or possession of the United States and in any foreign country.
- (4) To make contracts, incur liabilities, and borrow money.
- (5) To sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of all or any part of its assets.
- (6) To issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of all or any part of its assets.
- (7) To acquire by purchase or in any other manner and take, receive, own, hold, use, employ, improve, encumber, and otherwise deal with any interest in real and personal property, wherever located.
- (8) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and deal in and with:



(A) securities, shares, and other interests in any obligations of domestic and foreign corporations, other real estate investment trusts, associations, partnerships, and other persons; and

(B) direct and indirect obligations of the United States, any other government, state, territory, government district, and municipality, and any instrumentality of them.

(9) To elect or appoint trustees, officers, and agents of the trust for the period of time the declaration of trust or bylaws provide, to define their duties, and to determine their compensation.

(10) To adopt and implement employee and officer benefit plans.

(11) To make and alter bylaws not inconsistent with law or with its declaration of trust to regulate the government of the real estate investment trust and the administration of its affairs.

(12) To exercise these powers, including the power to take, hold, and dispose of the title to real and personal property in the name of the trust or in the name of its trustees, without the filing of any bond.

(13) To generally exercise the powers set forth in its declaration of trust that are not inconsistent with law and are appropriate to promote and attain the purposes set forth in its declaration of trust.

(14) To enter into a business combination subject to IC 23-1-43.

(15) To indemnify or advance expenses to trustees, officers, employees, and agents of the trust to the same extent as is permitted for directors, officers, employees, and agents of a corporation under IC 23-1.

(16) To renounce, in its declaration of trust or by resolution of its board of trustees, any interest or expectancy of the real estate investment trust in, or in being offered an opportunity to participate in, business opportunities or classes or categories of business opportunities that are:

(A) presented to the real estate investment trust; or

(B) developed by or presented to one (1) or more of its trustees or officers.

Sec. 2. One (1) or more shareholders of a real estate investment trust may confer the right to vote or otherwise represent their shares to a trustee by:



- (1) entering into a written voting trust agreement which specifies the terms and conditions of the voting trust;
- (2) depositing an executed copy of the agreement with the real estate investment trust at its principal office; and
- (3) transferring their shares for purposes of the agreement to a trustee.

Chapter 4. Fees and Inspection of Records

Sec. 1. (a) Each declaration of trust and annual report filed with the secretary of state is a matter of public record.

(b) The secretary of state may inspect the records of a real estate investment trust at any reasonable time.

(c) A shareholder has the same right to inspect the records of the real estate investment trust that a shareholder in a corporation has under IC 23-1.

Sec. 2. (a) A real estate investment trust shall pay to the secretary of state the fees required under IC 23-1.

(b) To compute fees under this section, a real estate investment trust shall treat certificates of beneficial interest as if they were shares of stock in a corporation.

Chapter 5. Amendments and Termination

Sec. 1. (a) Except as provided in IC 23-21-2-2(e) and IC 23-21-2-3(a)(8), a declaration of trust may be amended only as provided in this chapter.

(b) The board of trustees of a real estate investment trust proposing an amendment to its declaration of trust shall:

- (1) adopt a resolution which sets forth the proposed amendment and declares that it is advisable; and
- (2) direct that the proposed amendment be submitted for consideration by the shareholders.

(c) If the proposed amendment is to be considered at a meeting of the shareholders, notice that states that a purpose of the meeting will be to act upon the proposed amendment shall be given by the real estate investment trust in the manner required by its declaration of trust or bylaws to each shareholder:

- (1) entitled to vote on the proposed amendment; and
- (2) not entitled to vote on the proposed amendment if the contract rights of the shareholder's shares, as expressly set forth in the declaration of trust, would be altered by the amendment.

The notice must include a copy of the amendment or a summary of the changes it will affect.

(d) The proposed amendment must be approved by the



1 shareholders of the real estate investment trust by the affirmative
 2 vote or written consent of two-thirds (2/3) of all the votes entitled
 3 to be cast on the matter. However, a declaration of trust may
 4 permit the board of trustees, with the approval of two-thirds (2/3)
 5 of its members, and without action by the shareholders, to amend
 6 the declaration of trust from time to time to qualify as a real estate
 7 investment trust under the Internal Revenue Code or under this
 8 title.

9 (e) Notwithstanding subsections (b) and (d), unless prohibited in
 10 the declaration of trust by reference to this subsection or to the
 11 subject matter of this subsection, a majority of the entire board of
 12 trustees, without action by the shareholders, may amend the
 13 declaration of trust in any respect in which the charter of a
 14 corporation may be amended under IC 23-1.

15 (f) This subsection applies to a real estate investment trust with
 16 a class of equity securities registered under the Securities
 17 Exchange Act of 1934. Unless prohibited in the declaration of trust
 18 by reference to this subsection or to the subject matter of this
 19 subsection, the board of trustees of a real estate investment trust
 20 may amend the declaration of trust, with the approval of a
 21 majority of the board of trustees and without shareholder action,
 22 to effect a reverse share split that results in a combination of
 23 shares of beneficial interest at a ratio of not more than ten (10)
 24 shares into one (1) share in any twelve (12) month period. Not later
 25 than twenty (20) days from the effective date of a reverse share
 26 split authorized under this subsection, the real estate investment
 27 trust shall give written notice of the reverse share split to each
 28 holder of record of the combined shares of beneficial interest as of
 29 the effective date.

30 (g) Articles of amendment shall be executed for the real estate
 31 investment trust in the manner required by IC 23-1 and filed with
 32 the secretary of state.

33 Sec. 2. (a) The following definitions apply throughout this
 34 section:

35 (1) "Domestic limited liability company" means a limited
 36 liability company formed under the laws of Indiana.

37 (2) "Domestic limited partnership" means a partnership
 38 formed by two (2) or more persons under the laws of Indiana
 39 and having one (1) or more general partners and one (1) or
 40 more limited partners.

41 (3) "Domestic partnership" or "partnership" means a
 42 partnership formed under the laws of Indiana.



(4) "Foreign business trust" means a business trust organized under the laws of the United States, another state of the United States, or a territory, possession, or district of the United States, or under the laws of a foreign country.

(5) "Foreign limited liability company" means a limited liability company formed under the laws of any state other than Indiana or under the laws of a foreign country.

(6) "Foreign limited partnership" means a partnership formed under the laws of any state other than Indiana or under the laws of a foreign country and having as partners one (1) or more general partners and one (1) or more limited partners.

(7) "Foreign partnership" means a partnership formed under the laws of any state, other than Indiana, or under the laws of a foreign country.

(8) "Indiana real estate investment trust" means a real estate investment trust in compliance with this article.

(b) Unless the declaration of trust provides otherwise, an Indiana real estate investment trust may merge into an Indiana or foreign business trust, into an Indiana or foreign corporation having capital stock, into a domestic or foreign partnership, or into a domestic or foreign limited partnership or limited liability company; or one (1) or more such business trusts, corporations, domestic or foreign partnerships, domestic or foreign limited partnerships, or limited liability companies may merge into it.

(c) A merger shall be approved in the manner provided by this section, except that:

(1) a foreign business trust, an Indiana business trust, other than an Indiana real estate investment trust, a corporation, a domestic or foreign partnership, or a domestic or foreign limited partnership party to the merger shall have the merger advised, authorized, and approved in the manner and by the vote required by its declaration of trust, governing instrument, charter, or partnership agreement and the laws of the place where it is organized;

(2) a:

(A) foreign limited liability company party to the merger shall have the merger advised, authorized, and approved in the manner and by the vote required by the laws of the place where it is organized; and

(B) domestic limited liability company shall have the merger approved in the manner provided under



1 **IC 23-18-7;**

2 **(3) a merger must be approved by an Indiana real estate**
 3 **investment trust successor only by a majority of its entire**
 4 **board of trustees, if the merger does not reclassify or change**
 5 **the terms of any class or series of its shares that are**
 6 **outstanding immediately before the merger becomes effective**
 7 **or otherwise amend its declaration of trust, and the number**
 8 **of shares of the class or series outstanding immediately after**
 9 **the effective time of the merger does not increase by more**
 10 **than twenty percent (20%) of the number of its shares of the**
 11 **class or series of shares outstanding immediately before the**
 12 **merger becomes effective; and**

13 **(4) a merger of a subsidiary with or into its parent must be**
 14 **approved only in the manner provided in IC 23-1-40.**

15 **(d) The board of trustees of each Indiana real estate investment**
 16 **trust proposing to merge shall:**

17 **(1) adopt a resolution that declares the proposed transaction**
 18 **is advisable on substantially the terms and conditions set forth**
 19 **or referred to in the resolution; and**

20 **(2) direct that the proposed transaction be submitted for**
 21 **consideration at either an annual or special meeting of**
 22 **shareholders.**

23 **(e) Notice that states that a purpose of a meeting will be to act**
 24 **upon the proposed merger shall be given by each Indiana real**
 25 **estate investment trust in the manner provided for corporations by**
 26 **IC 23-1 to each of its shareholders:**

27 **(1) entitled to vote on the proposed transaction; and**

28 **(2) not entitled to vote on the proposed transaction, except the**
 29 **shareholders of a successor in a merger if the merger does not**
 30 **alter the contract rights of their shares as expressly set forth**
 31 **in the declaration of trust.**

32 **(f) An agreement of merger may require that the proposed**
 33 **transaction be submitted to the shareholders, even if the board of**
 34 **trustees determines at any time after having declared the**
 35 **advisability of the proposed transaction that the proposed**
 36 **transaction is no longer advisable and either makes no**
 37 **recommendation to the shareholders or recommends that the**
 38 **shareholders reject the proposed transaction.**

39 **(g) Except as provided in IC 23-21-2-2, the proposed merger**
 40 **must be approved by the shareholders of each Indiana real estate**
 41 **investment trust by the affirmative vote of two-thirds (2/3) of all**
 42 **the votes entitled to be cast on the matter.**



1 (h) Articles of merger containing provisions required by
 2 IC 23-1-40 and other provisions as may be permitted by that
 3 section shall be:

4 (1) executed for each party to the articles in the manner
 5 required by IC 23-1; and

6 (2) filed with the secretary of state.

7 (i) A proposed merger may be abandoned before the effective
 8 date of the articles under one (1) or more of the following
 9 circumstances:

10 (1) If the articles so provide, by majority vote of the entire
 11 board of trustees of any one (1) business trust party to the
 12 articles or of the entire board of directors of any one (1)
 13 corporation party to the articles.

14 (2) Unless the articles provide otherwise, by majority vote of
 15 the entire board of trustees of each Indiana real estate
 16 investment trust party to the articles.

17 (3) By unanimous consent of the members of a limited liability
 18 company party to the articles.

19 If the articles have been filed with the secretary of state, notice of
 20 the abandonment shall be given promptly to the secretary of state.
 21 If the proposed merger is abandoned as provided in this
 22 subsection, no legal liability arises under the articles. However, an
 23 abandonment does not prejudice the rights of any person under
 24 any other contract made by a business trust, corporation, or
 25 limited liability company party to the proposed articles in
 26 connection with the proposed merger.

27 (j) Each shareholder of an Indiana real estate investment trust
 28 objecting to a merger of the Indiana real estate investment trust
 29 has the same rights as a dissenting shareholder of an Indiana
 30 corporation under IC 23-1-40-7 and IC 23-1-44 and under the
 31 same procedures.

32 (k) The secretary of state shall prepare certificates of merger
 33 that specify the:

34 (1) name of each party to the articles;

35 (2) name of the successor and the location of its principal
 36 office in Indiana or, if it has none, its principal place of
 37 business; and

38 (3) time the articles are accepted for filing by the secretary of
 39 state.

40 In addition to any other provision of law with respect to recording,
 41 the secretary of state shall send one (1) certificate each to the
 42 recorder for each county where the articles show that a merging



business trust, corporation, partnership, limited partnership, or limited liability company other than the successor owns an interest in land. On receipt of a certificate, the recorder promptly shall record it as with other property records.

(l) In order to keep the land assessment records current in each county, the secretary of state shall require a business trust, corporation, partnership, limited partnership, or limited liability company to submit with the articles a property certificate for each county where a merging business trust, corporation, partnership, limited partnership, or limited liability company other than the successor owns an interest in land. A property certificate:

(1) is not required with respect to any property in which the only interest owned by the merging business trust, corporation, partnership, limited partnership, or limited liability company is a security interest;

(2) must be in the form and number of copies which the secretary of state requires and may include the certificate of the secretary of state required by subsection (k); and

(3) must provide a deed reference or other description sufficient to identify the property.

The secretary of state shall indicate on the certificate the time the articles are accepted for filing and send a copy of it to the county assessor of the county where the property is located. A transfer, vesting, or devolution of title to the property is not invalidated or otherwise affected by any error or defect in the property certificate, failure to file it, or failure by the secretary of state to act on it.

(m) If the successor in a merger is an Indiana real estate investment trust, a merger is effective as of the later of the time:

(1) the secretary of state accepts the articles of merger for filing; or

(2) established under the articles, not to exceed thirty (30) days after the articles are accepted for filing.

(n) If the successor in a merger is a foreign corporation, a foreign partnership, a foreign limited partnership, a foreign limited liability company, or an Indiana or foreign business trust, other than an Indiana real estate investment trust, the merger is effective as of the later of the time:

(1) specified by the law of the place where the successor is organized; or

(2) the secretary of state accepts the articles of merger for filing.



1 A foreign successor in a merger shall file with the secretary of state
 2 a certificate from the place where it is organized which certifies the
 3 date the articles of merger were filed. However, the failure to file
 4 this certificate does not invalidate the merger.

5 (o) Consummation of a merger has the following effects:

6 (1) The separate existence of each business trust, corporation,
 7 partnership, limited partnership, or limited liability company
 8 party to the articles, except the successor, ceases.

9 (2) The shares of each business trust party to the articles
 10 which are to be converted or exchanged under the terms of
 11 the articles cease to exist, subject to the rights of an objecting
 12 shareholder under subsection (j).

13 (3) In addition to any other purposes and powers set forth in
 14 the articles, if the articles provide, the successor has the
 15 purposes and powers of each party to the articles.

16 (4) The assets of each party to the articles, including any
 17 legacies which it would have been capable of taking, transfer
 18 to, vest in, and devolve on the successor without further act or
 19 deed.

20 (5) Confirmatory deeds, assignments, or similar instruments
 21 to evidence the transfer may be executed and delivered at any
 22 time in the name of the transferring party to the articles by its
 23 last acting officers or trustees or by the appropriate officers
 24 or trustees of the successor.

25 (6) The successor is liable for all the debts and obligations of
 26 each nonsurviving party to the articles. An existing claim,
 27 action, or proceeding pending by or against any nonsurviving
 28 party to the articles may be prosecuted to judgment as if the
 29 merger had not taken place, or, on motion of the successor or
 30 any party, the successor may be substituted as a party, and a
 31 judgment against the nonsurviving party to the articles
 32 constitutes a lien on the property of the successor.

33 (7) A merger does not impair the rights of creditors or any
 34 liens on the property of any business trust, corporation,
 35 partnership, limited partnership, or limited liability company
 36 party to the articles.

37 Sec. 3. (a) If authorized by a majority of the entire board of
 38 trustees, a real estate investment trust may restate its declaration
 39 of trust as provided in this section.

40 (b) Articles of restatement containing provisions required by
 41 IC 23-1 and other provisions as may be permitted by that section
 42 must be:



(1) executed for each party to the articles in the manner required by IC 23-1; and

(2) filed with the secretary of state.

Sec. 4. (a) A complete restatement of the declaration of trust may be submitted for approval in the manner required for an amendment of the declaration of trust to a meeting of the real estate investment trust's shareholders or trustees.

(b) If the restatement is submitted for approval in the manner required for an amendment to the declaration of trust, any amendments to the declaration of trust approved at the meeting may be included in the restatement.

(c) Articles of amendment and restatement must include the provisions required to be included in both articles of amendment and articles of restatement.

(d) Articles of amendment and restatement containing provisions required by IC 23-1 and any other provisions permitted by that article shall be:

(1) executed for each party to the articles in the manner required by IC 23-1; and

(2) filed with the secretary of state.

Sec. 5. (a) A real estate investment trust may terminate its existence by voluntary dissolution. The secretary of state shall be notified of the effective date of the dissolution.

(b) A real estate investment trust may curtail or cease its trust activities by partially or completely distributing its assets.

(c) The attorney general may institute proceedings to dissolve a real estate investment trust which has abused, misused, or failed to use its powers. The proceedings shall be brought in the manner and on the grounds provided by IC 23-1-47-1(1) with respect to dissolution of a corporation. The venue of an action under this subsection is in a county where an officer or resident agent of the real estate investment trust is located.

Sec. 6. (a) A real estate investment trust may file a certificate of notice with the secretary of state.

(b) A certificate of notice may describe:

(1) an action by the real estate investment trust, its board of trustees, or its shareholders;

(2) the occurrence of or change to facts ascertainable outside the declaration of trust, as defined in IC 23-21-1-4; and

(3) any other information that the real estate investment trust determines should be disclosed.

(c) A certificate of notice may not:



(1) amend, supplement, or correct the declaration of trust of the real estate investment trust in any manner; or

(2) affect any rights or liabilities of shareholders, whether or not accrued or incurred before the certificate of notice is filed.

(d) A certificate of notice is not a part of the declaration of trust of a real estate investment trust.

(e) A trustee of a real estate investment trust is not required to authorize or direct the filing of a certificate of notice.

(f) A real estate investment trust is not required to file a certificate of notice for any purpose, including to indicate that there has been a change to the facts or information contained in a previously filed certificate of notice.

(g) A certificate of notice must be executed in the manner required for charter documents by IC 23-1.

Chapter 6. Liability, Service of Process, and Miscellaneous Provisions

Sec. 1. (a) The liability of a real estate investment trust extends to as much of the trust estate, including the whole, as necessary to discharge the liability.

(b) A shareholder or trustee of a real estate investment trust has the same immunity from liability described in IC 23-1-26 for the shareholder of a corporation.

Sec. 2. The following apply to real estate investment trusts:

(1) IC 23-1-26-5.

(2) IC 23-1-53-1.

(3) Provisions in IC 23-1 relating to:

(A) the duties and immunities of an officer or director; and

(B) proposals and nominations made by a shareholder at a shareholder meeting.

(4) IC 23-1-29-3.

Sec. 3. In an action against a real estate investment trust doing business in Indiana, process may be served on any officer or resident agent of the real estate investment trust.

Chapter 7. Conversion of Real Estate Investment Trusts

Sec. 1. (a) The following definitions apply throughout this chapter:

(1) "Other entity" means:

(A) an Indiana corporation;

(B) a foreign corporation;

(C) a domestic limited liability company;

(D) a foreign limited liability company;

(E) a partnership;



- (F) a limited partnership, including a limited partnership that is a limited liability partnership;
- (G) a foreign limited partnership;
- (H) a business trust that is not a real estate investment trust; or
- (I) another form of unincorporated business formed under the laws of Indiana or the laws of the United States, another state of the United States, a territory, possession or district of the United States, or a foreign country.

(b) Unless the declaration of trust provides otherwise, a real estate investment trust may convert to an other entity by:

- (1) approving the conversion in accordance with this chapter; and
- (2) filing with the secretary of state articles of conversion executed in the manner required by IC 23-1.

(c) An other entity may convert to a real estate investment trust by complying with this chapter and filing with the secretary of state:

- (1) articles of conversion executed in the manner required by IC 23-1; and
- (2) a declaration of trust that includes the name of the converting other entity, executed in the manner required by IC 23-1.

Sec. 2. (a) A conversion of a real estate investment trust to an other entity shall be approved in the manner provided by this section and in accordance with any additional requirements set forth in the real estate investment trust's declaration of trust.

(b) A conversion of a real estate investment trust needs to be approved only by a majority of the board of trustees if no shares of beneficial interest are outstanding or subscribed for.

(c) The board of trustees of a real estate investment trust that proposes to convert to an other entity shall:

- (1) adopt a resolution declaring that the proposed conversion is advisable on substantially the terms and conditions set forth or referred to in the resolution; and
- (2) direct that the proposed conversion be submitted for consideration at an annual or a special meeting of the shareholders.

(d) Notice stating that a purpose of the meeting will be to act on the proposed conversion shall be given by the real estate investment trust in the manner provided for corporations under IC 23-1 to each of its shareholders:



1 (1) entitled to vote on the proposed transaction; and

2 (2) not entitled to vote on the proposed transaction.

3 (e) The proposed conversion must be approved by the
4 shareholders of the real estate investment trust by the affirmative
5 vote of two-thirds (2/3) of all the votes entitled to be cast on the
6 matter.

7 (f) A conversion of an other entity to a real estate investment
8 trust must be approved in the manner and by the vote required by
9 its governing document and the laws of the place where it is
10 incorporated or organized.

11 (g) Each shareholder of a real estate investment trust objecting
12 to a conversion of the real estate investment trust has the same
13 rights as a dissenting shareholder of an Indiana corporation under
14 IC 23-1-44 and under the same procedures.

15 Sec. 3. (a) Articles of conversion shall be filed with the secretary
16 of state.

17 (b) In a conversion of a real estate investment trust to an other
18 entity, the articles of conversion shall set forth the following:

19 (1) The name of the real estate investment trust and the date
20 of filing of the original declaration of trust with the secretary
21 of state.

22 (2) The name of the other entity to which the real estate
23 investment trust will be converted and the place of
24 incorporation or organization of the other entity.

25 (3) A statement that the conversion has been approved in
26 accordance with the provisions of this chapter.

27 (4) The manner and basis of converting or exchanging issued
28 shares of beneficial interest of the real estate investment trust
29 into shares of stock, membership interests, partnership
30 interests, beneficial interests, or other ownership interests of
31 the other entity, or other consideration, and the treatment of
32 any issued shares of beneficial interest not to be converted or
33 exchanged, any of which may be made dependent on facts
34 ascertainable outside the articles of conversion.

35 (5) The future effective time, which must be a time certain, of
36 the articles of conversion, if the articles of conversion are not
37 to be effective on the acceptance for filing of the articles of
38 conversion.

39 (6) If the other entity is not organized under the laws of
40 Indiana, the:

41 (A) location of the principal office in the place where it is
42 organized; and



1 (B) name and address of the resident agent in Indiana.

2 (7) Any other provision necessary to effect the conversion.

3 (c) In a conversion of an other entity to a real estate investment
4 trust, the articles of conversion must set forth:

5 (1) the name of the other entity, the date on which the other
6 entity was first created, and the place of incorporation or
7 organization of the other entity;

8 (2) the name of the real estate investment trust to which the
9 other entity will be converted;

10 (3) a statement that the conversion has been approved in
11 accordance with the provisions of this chapter;

12 (4) the manner and basis of converting or exchanging any
13 outstanding shares of stock, membership interests,
14 partnership interests, beneficial interests, or other ownership
15 interests of the other entity into shares of beneficial interest of
16 the real estate investment trust, or other consideration, and
17 the treatment of any outstanding shares of stock, membership
18 interests, partnership interests, beneficial interests, or other
19 ownership interests not to be converted or exchanged, any of
20 which may be made dependent on facts ascertainable outside
21 the articles of conversion;

22 (5) the future effective time, which must be a time certain, of
23 the articles of conversion, if the articles of conversion are not
24 to be effective on the acceptance for filing of the articles of
25 conversion; and

26 (6) any other provision necessary to effect the conversion.

27 (d) The articles of conversion may contain a future effective
28 time of the articles of conversion that is not later than thirty (30)
29 days after the articles of conversion are accepted for filing.

30 Sec. 4. (a) When a real estate investment trust is converted to an
31 other entity:

32 (1) the real estate investment trust ceases to exist as a real
33 estate investment trust and continues to exist as the other
34 entity into which the real estate investment trust has
35 converted, and the other entity shall, for all purposes, be
36 considered to be the same entity as the converting real estate
37 investment trust;

38 (2) all the assets of the real estate investment trust, including
39 any legacies that it would have been capable of taking, shall
40 vest in and devolve on the other entity without further act or
41 deed and are the property of the other entity, and the title to
42 any real property vested by deed or otherwise in the real



1 estate investment trust does not revert and is not in any way
2 impaired by reason of a conversion under this chapter;

3 (3) the conversion of the real estate investment trust to an
4 other entity does not affect, invalidate, terminate, suspend, or
5 nullify any licenses, permits, or registrations granted to the
6 real estate investment trust before the conversion;

7 (4) confirmatory deeds, assignments, or similar instruments
8 to evidence the conversion may be executed and delivered at
9 any time in the name of the real estate investment trust by its
10 last acting officers, or by the appropriate authorized persons,
11 partners, officers, trustees, or members of the other entity;

12 (5) the other entity is liable for all the debts and obligations of
13 the real estate investment trust;

14 (6) an existing claim, action, or proceeding pending by or
15 against the real estate investment trust may be prosecuted to
16 judgment as if the conversion had not taken place, or, on
17 motion of the other entity or any party, the other entity may
18 be substituted as a party, and a judgment against the real
19 estate investment trust constitutes a lien on the property of
20 the other entity;

21 (7) a conversion does not impair the rights of creditors or any
22 liens on the property of the real estate investment trust;

23 (8) subject to the treatment of the ownership interests of the
24 shareholders of the real estate investment trust under the
25 articles of conversion and to the rights of an objecting
26 shareholder under this chapter, the ownership interests of the
27 shareholders of the real estate investment trust cease to exist
28 as shares of beneficial interest of the real estate investment
29 trust and continue to exist as ownership interests in the other
30 entity;

31 (9) the conversion of the real estate investment trust to an
32 other entity in accordance with articles of conversion under
33 this chapter does not affect any debts, obligations, or
34 liabilities of the real estate investment trust or the personal
35 liability of any person incurred before the conversion;

36 (10) unless otherwise provided in the articles of conversion,
37 the converting real estate investment trust is not required to
38 wind up its affairs or pay its liabilities and distribute its
39 assets, and the conversion does not constitute dissolution or a
40 transfer of assets or liabilities of the real estate investment
41 trust; and

42 (11) a person becomes liable for any obligation incurred by



1 the real estate investment trust before the completion of the
2 conversion only to the extent provided for by the laws
3 applicable to the other entity.

4 (b) When an other entity is converted to a real estate investment
5 trust:

6 (1) the real estate investment trust, for all purposes, is
7 considered to be the same entity as the converting other
8 entity;

9 (2) all the assets of the other entity, including any legacies that
10 it would have been capable of taking, vest in and devolve on
11 the real estate investment trust without further act or deed
12 and are the property of the real estate investment trust, and
13 the title to any real property vested by deed or otherwise in
14 the other entity does not revert and is not in any way
15 impaired by reason of a conversion under this chapter;

16 (3) the conversion of the other entity to a real estate
17 investment trust does not affect, invalidate, terminate,
18 suspend, or nullify any licenses, permits, or registrations
19 granted to the other entity before the conversion;

20 (4) confirmatory deeds, assignments, or similar instruments
21 to evidence the conversion may be executed and delivered at
22 any time in the name of the other entity by the appropriate
23 authorized persons, partners, officers, trustees, or members
24 of the other entity or by the officers of the real estate
25 investment trust;

26 (5) the real estate investment trust is liable for all the debts
27 and obligations of the other entity;

28 (6) an existing claim, action, or proceeding pending by or
29 against the other entity may be prosecuted to judgment as if
30 the conversion had not taken place, or, on motion of the other
31 entity or any party, the real estate investment trust may be
32 substituted as a party, and a judgment against the other entity
33 constitutes a lien on the property of the real estate investment
34 trust;

35 (7) a conversion does not impair the rights of creditors or any
36 liens on the property of the other entity;

37 (8) the conversion of an other entity to a real estate
38 investment trust in accordance with articles of conversion
39 under this chapter does not affect any debts, obligations, or
40 liabilities of the other entity or the personal liability of any
41 person incurred before the completion of the conversion;

42 (9) a person remains liable for any obligation incurred by the



1 other entity before the completion of the conversion only to
 2 the extent that the person would have been liable if the
 3 conversion had not occurred; and

4 (10) subject to the treatment of the ownership interests of the
 5 owners of the other entity under the articles of conversion, the
 6 ownership interests of the owners of the other entity cease to
 7 exist as ownership interests in the converted other entity and
 8 continue to exist as shares of beneficial interest in the real
 9 estate investment trust.

10 Sec. 5. (a) In a conversion of an other entity to a real estate
 11 investment trust, the stock, membership interests, partnership
 12 interests, beneficial interests, or other ownership interests of the
 13 other entity may be exchanged for or converted into any one (1) or
 14 more of the following:

15 (1) Shares of beneficial interest of the real estate investment
 16 trust or stock, evidence of indebtedness, membership
 17 interests, partnership interests, beneficial interests, or other
 18 ownership interests of any other real estate investment trust
 19 or other entity, whether or not a party to the conversion.

20 (2) Other tangible or intangible property.

21 (3) Money.

22 (4) Any other consideration.

23 (b) In a conversion of a real estate investment trust to an other
 24 entity, shares of beneficial interest of the real estate investment
 25 trust may be exchanged for or converted into any one (1) or more
 26 of the following:

27 (1) Stock, evidence of indebtedness, membership interests,
 28 partnership interests, beneficial interests, or other ownership
 29 interests of the other entity to which the real estate investment
 30 trust is converted or of any other real estate investment trust
 31 or other entity, whether or not a party to the conversion.

32 (2) Other tangible or intangible property.

33 (3) Money.

34 (4) Any other consideration.

35 Sec. 6. (a) The conversion of an other entity to a real estate
 36 investment trust shall be completed on the later of the:

37 (1) formation of the real estate investment trust in accordance
 38 with this article; or

39 (2) effectiveness of articles of conversion filed with the
 40 secretary of state.

41 (b) The conversion of a real estate investment trust to an other
 42 entity shall be completed on the effectiveness of articles of



conversion filed with the secretary of state.

(c) Articles of conversion are effective on the later of the:

- (1) time the secretary of state accepts the articles of conversion for filing; or
- (2) future effective time of the articles of conversion as set forth in articles of conversion that have been accepted by the secretary of state for filing.

(d) Except as provided in subsection (e), at the time the conversion of an other entity to a real estate investment trust is completed:

- (1) the other entity is converted to a real estate investment trust;
- (2) the conversion has the effects set forth in this chapter; and
- (3) the real estate investment trust is subject to this article.

(e) The existence of the real estate investment trust commences on the date the other entity commenced its existence in the place in which the other entity was first incorporated, created, formed, or otherwise came into being.

(f) At the time the conversion of a real estate investment trust to an other entity is completed, the conversion has the effects set forth in this chapter.

Sec. 7. (a) Unless the declaration of trust of the real estate investment trust or articles of conversion provide otherwise, the proposed conversion of a real estate investment trust to an other entity may be abandoned before the effective date of the articles of conversion by majority vote of the entire board of trustees of the real estate investment trust party to the articles of conversion.

(b) Unless the articles of conversion provide otherwise, the proposed conversion of an other entity to a real estate investment trust may be abandoned in the manner and by the vote required by the governing document of the other entity and the laws of the place in which it is incorporated or organized or, if no manner and vote are specified, in the manner and by the vote required to approve the conversion under this chapter.

(c) If the articles of conversion have been filed with the secretary of state, notice of the abandonment shall be given promptly to the secretary of state.

(d) If the proposed conversion is abandoned as provided in this section, no legal liability arises under the articles of conversion. Abandonment of a conversion under this section does not prejudice the rights of any person under any other contract made by a real estate investment trust in connection with the proposed conversion.



Chapter 8. Penalties

Sec. 1. The trustees of a real estate investment trust that does business in Indiana without filing its declaration of trust with the secretary of state as required by IC 23-21-2-2 are each subject to a civil penalty not exceeding one thousand dollars (\$1,000), payable to the secretary of state.

SECTION 3. [EFFECTIVE JULY 1, 2016] (a) The legislative services agency shall prepare legislation for introduction in the 2017 regular session of the general assembly to make appropriate changes in statutes as required by this act.

(b) This SECTION expires June 30, 2017.

